

REMARKS UNDER 37 CFR § 1.111

Formal Matters

Claims 26-32 are pending after entry of the amendments set forth herein.

Claims 26-30 were rejected. No claims were allowed.

Claim 28 is canceled without prejudice to renewal, without intent to acquiesce to any rejection, and without intent to surrender any subject matter encompassed by the canceled claim. Applicants expressly reserve the right to pursue any canceled subject matter in one or more continuation and/or divisional applications.

Claims 26-27 and 29-30 are amended. The amendments to the claims were made solely in the interest of expediting prosecution, and are not to be construed as an acquiescence to any objection or rejection of any claim. The limitation set forth in claim 30 has been incorporated into claim 27. Support for the new claims 31 and 32 is found in the claims as originally filed, and throughout the specification, in particular at the following exemplary locations: claim 12 and Fig. 2, 4, 6 and 8. Specific support for the amendment to claim 26 may be found in Fig. 7, which shows the start and stop codons of SEQ ID NO:7. Accordingly, no new matter is added by these amendments.

Applicants respectfully request reconsideration of the application in view of the remarks made herein.

The finality of this Office Action

The Applicants note that that Office Action Summary of this Office Action indicates that the Office Action is final. However, Applicants also note that this is the first Office Action on the merits, and, as such, the Office Action should be a non-final Office Action, not a final Office Action. See MPEP § 706.05.

The Applicants respectfully request that the finality of this Office Action be withdrawn.

Allowable subject matter

The Applicants gratefully acknowledge the Examiner's allowance of claims 29-30.

Claim objections

Claims 26-27 and 29-30 are objected to because they recite non-elected limitations (i.e., they recite SEQ ID NOS: 1-6 and 9-10).

Claims 26, 27 and 29-30, as amended, are directed to the subject matter encompassed by claim Groups 1-5, as set forth in the Restriction Requirement mailed July 17, 2002, and do not recite any sequence other than SEQ ID NOS: 7 and 8, as required.

Applicants submit that the objections of claims 26-27 and 29-30 has been adequately addressed in view of the remarks set forth above. The Examiner is thus respectfully requested to withdraw the objections.

Claim rejections under 35 U.S.C. § 112

Claim 27 is rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the Office Action asserts that amino acid sequences having at least 90% identity to SEQ ID NO:8 are not adequately described in the specification.

Claim 29, which is dependent on claim 27, has been deemed allowable by the Examiner. Without wishing to acquiesce to the correctness of this rejection, claim 27 has been amended to incorporate the all the limitations of claim 29, and, as such, amended claim 27 should be allowable.

Applicants submit that the rejection of claim 27 under 35 U.S.C. § 112, first paragraph, has been adequately addressed in view of the remarks set forth above. The Examiner is thus respectfully requested to withdraw the rejection.

Claim rejections under 35 U.S.C. § 102

Claim 26 is rejected under 35 U.S.C. § 102(e) as being anticipated by USPN 6,066,575.

Claim 26 is directed to a recombinant ING2 protein encoded by nucleotides 120-845 of SEQ ID NO:7.

USPN 6,066,575, as shown in the sequence alignments provided with the Office Action, provides two nucleic acid sequences, SEQ ID NOS:2 and 3, that are similar (but not identical) to a polynucleotide provided by the contiguous nucleotides 156-803 of SEQ ID NO:7.

Since the claims require a recombinant ING2 protein encoded by nucleotides 120-845 of SEQ ID NO:7, and USPN 6,066,575 only provides polynucleotides that have some similarity to nucleotides 156-

803 of SEQ ID NO:7, the polynucleotides disclosed in USPN 6,066,575 cannot anticipate the subject matter of claim 26.

Applicants submit that the rejection of claim 26 under 35 U.S.C. § 102, has been adequately addressed in view of the remarks set forth above. The Examiner is thus respectfully requested to withdraw the rejection.

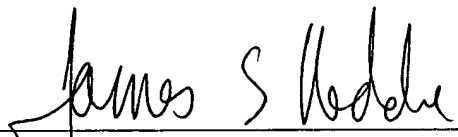
CONCLUSION

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number RIGL-008CIP.

Respectfully submitted,
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Date: May 23, 2003

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